

FIRST REGULAR SESSION

HOUSE BILL NO. 291

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CRAWFORD.

0183H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 362, RSMo, by adding thereto twenty-two new sections relating to the Missouri family trust company act, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 362, RSMo, is amended by adding thereto twenty-two new sections, to be known as sections 362.1010, 362.1015, 362.1020, 362.1030, 362.1035, 362.1037, 362.1040, 362.1045, 362.1050, 362.1055, 362.1060, 362.1065, 362.1070, 362.1075, 362.1080, 362.1085, 362.1090, 362.1095, 362.1100, 362.1105, 362.1110, and 362.1115, to read as follows:

362.1010. Sections 362.1010 to 362.1115 shall be known and may be cited as the "Missouri Family Trust Company Act".

362.1015. For purposes of sections 362.1010 to 362.1115, the following terms mean:

(1) "Authorized representative", if a family trust company is organized as a corporation, then an officer or director of the family trust company or, if a family trust company is organized as a limited liability company, then a manager, officer, or member of the family trust company;

(2) "Collateral kinship", a relationship that is not lineal but stems from a common ancestor;

(3) "Controlling stockholder or member", an individual who owns or has the ability or power to directly or indirectly vote ten percent or more of the outstanding shares, membership interest, or membership units of the family trust company;

(4) "Designated relative", a common ancestor of a family, either living or deceased, who is so designated in an organizational instrument. No family trust company shall have more than one designated relative;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 **(5) "Engage in trust company business with the general public", any sales,**
15 **solicitations, arrangements, agreements, or transactions to provide trust or other business**
16 **services, whether for a fee, commission, or any other type of remuneration, with any person**
17 **who is not a family member or any sole proprietorship, partnership, limited liability**
18 **company, joint venture, association, corporation, trust, estate, business trust, or other**
19 **company that is not one hundred percent owned by one or more family members;**

20 **(6) "Family affiliate", a company or other entity wholly and exclusively owned by,**
21 **directly or indirectly, and operated for the sole benefit of:**

22 **(a) One or more family members; or**

23 **(b) Charitable foundations, charitable trusts, or other charitable entities if such**
24 **foundation, trust, or entity is funded exclusively by one or more family members;**

25 **(7) "Family member":**

26 **(a) A designated relative;**

27 **(b) Any person within the tenth degree of lineal kinship of a designated relative;**

28 **(c) Any person within the ninth degree of collateral kinship to a designated relative;**

29 **(d) The spouse of any person who qualifies under paragraphs (a) through (c) of this**
30 **subdivision;**

31 **(e) Any former spouse of any person who qualifies under paragraphs (a) through**
32 **(c) of this subdivision;**

33 **(f) The probate estate of any person who qualified as a family member under**
34 **paragraphs (a) through (e) of this subdivision;**

35 **(g) A family affiliate;**

36 **(h) An irrevocable trust funded exclusively by one or more family members of**
37 **which all permissible distributees, as defined under subsection (15) of section 456.1-103,**
38 **qualify under paragraphs (a) through (g) of this subdivision or are charitable foundations,**
39 **charitable trusts, or other charitable entities; or**

40 **(i) A revocable trust of which one or more family members are the sole settlors.**

41

42 **For purposes of this subsection, a legally adopted person shall be treated as a natural child**
43 **of the adoptive parents; a stepchild shall be treated as a natural child of the family member**
44 **who is or was the stepparent of that child; and a foster child or an individual who was a**
45 **minor when a family member became his or her legal guardian shall be treated as a natural**
46 **child of the family member appointed as foster parent or guardian. Degrees of kinship are**
47 **calculated by adding the number of steps from the designated relative through each person**
48 **to the family member either directly in case of lineal kinship or through the common**
49 **ancestor in the case of collateral kinship;**

50 **(8) "Family trust company", a corporation or limited liability company organized**
51 **or qualified to do business in this state that is wholly owned and exclusively controlled by,**
52 **directly or indirectly, one or more family members, excluding any former spouse of a**
53 **family member; that operates for the exclusive benefit of a family member regardless of**
54 **whether compensation is received or anticipated; and that does not engage in trust**
55 **company business with the general public or otherwise hold itself out as a trustee for hire**
56 **by advertisement, solicitation, or other means. The term "family trust company" shall**
57 **include foreign family trust companies unless context indicates otherwise;**

58 **(9) "Family trust company affiliated party":**

59 **(a) A director, officer, manager, employee, or controlling stockholder or member**
60 **of a family trust company; or**

61 **(b) A stockholder, member, or any other person as determined by the secretary**
62 **who participates in the affairs of a family trust company;**

63 **(10) "Foreign family trust company", a family trust company that:**

64 **(a) Is licensed by the District of Columbia or a state in the United States other than**
65 **this state;**

66 **(b) Has its principal place of business in the District of Columbia or a state in the**
67 **United States other than this state;**

68 **(c) Is operated in accordance with family or private trust company laws of the**
69 **District of Columbia or of the state in which it is licensed;**

70 **(d) Is subject to statutory or regulatory mandated oversight by the District of**
71 **Columbia or state in which the principal place of business is located; and**

72 **(e) Is not owned by or a subsidiary of a corporation, limited liability company, or**
73 **other business entity that is organized in or licensed by any foreign country;**

74 **(11) "Lineal kinship", a relationship in the direct line of ascent or descent from a**
75 **designated relative;**

76 **(12) "Officer", an individual, regardless of whether the individual has an official**
77 **title or receives a salary or other compensation, who may participate in the major policy**
78 **making functions of a family trust company other than as a director. The term shall not**
79 **include an individual who may have an official title and exercises discretion in the**
80 **performance of duties and functions but who does not participate in determining the major**
81 **policies of the family trust company and whose decisions are limited by policy standards**
82 **established by other officers, regardless of whether the policy standards have been adopted**
83 **by the board of directors. The chair of the board of directors, the president, the chief**
84 **executive officer, the chief financial officer, the senior trust officer, all executive vice**
85 **presidents of a family trust company, and all managers if organized as a limited liability**

86 company are presumed to be officers unless such officer is excluded, other than in the
87 capacity of a director, by resolution of the board of directors or members or by the bylaws
88 or operating agreement of the family trust company from participating in major policy
89 making functions of the family trust company, and such excluded officer does not actually
90 participate therein;

91 (13) "Organizational instrument", the articles of incorporation for a corporation
92 or the articles of organization for a limited liability company;

93 (14) "Principal place of business", the physical location where officers of a family
94 trust company direct, control, and coordinate the trust company's activities;

95 (15) "Principal place of operations", the physical location in this state where a
96 foreign family trust company stores and maintains its books and records pertaining to
97 operations in this state;

98 (16) "Qualified beneficiary", the same meaning as defined under subsection (20)
99 of section 456.1-103;

100 (17) "Registered agent", a business or individual designated by a family trust
101 company to receive service of process on behalf of the family trust company;

102 (18) "Reports of examinations, operations, or conditions", records submitted to the
103 secretary or prepared by the secretary as part of the secretary's duties performed under
104 the Missouri family trust company act;

105 (19) "Secretary", the secretary of state for the state of Missouri;

106 (20) "Working papers", the records of the procedures followed, tests performed,
107 information obtained, and conclusions reached in an investigation under the Missouri
108 family trust company act. The term shall also include books and records.

362.1020. If a family trust company limits its activities to the activities authorized
2 under the Missouri family trust company act, then section 361.160 and sections 362.010 to
3 362.950 shall not apply to the family trust company.

362.1030. 1. No family trust company shall conduct business in this state unless
2 such family trust company is registered with the secretary in a format prescribed by the
3 secretary.

4 2. To register, a family trust company that is not a foreign family trust company
5 shall file its organizational instrument with the secretary. At a minimum, the
6 organizational instrument shall state:

7 (1) The name of the designated relative;

8 (2) That the family trust company is a family trust company as defined under the
9 Missouri family trust company act; and

10 (3) That its operations will comply with the Missouri family trust company act.

11 **3. A foreign family trust company shall register by filing with the secretary:**

12 **(1) An initial registration to begin operations as a foreign family trust company;**
13 **and**

14 **(2) An application for a certificate of authority in accordance with and subject to**
15 **chapters 347 or 351.**

16 **4. A foreign family trust company application shall be submitted on a form**
17 **prescribed by the secretary and be signed, under penalty of perjury, by an authorized**
18 **representative. At a minimum, the application shall include:**

19 **(1) A statement attesting that the foreign family trust company:**

20 **(a) Will comply with the provisions of the Missouri family trust company act; and**

21 **(b) Is in compliance with the family trust company laws and regulations of the**
22 **jurisdiction of its incorporation or organization;**

23 **(2) The current telephone number and street address of:**

24 **(a) The foreign family trust company's principal place of business in the**
25 **jurisdiction of its incorporation or organization;**

26 **(b) The foreign family trust company's principal place of operations; and**

27 **(c) Any other offices located within this state;**

28 **(3) The name and current street address in this state of its registered agent;**

29 **(4) A certified copy of a certificate of good standing, or an equivalent document,**
30 **authenticated by the official having custody of records in the jurisdiction where the foreign**
31 **family trust company is incorporated or organized;**

32 **(5) Satisfactory proof, as determined by the secretary, that the foreign family trust**
33 **company is organized in a manner similar to a Missouri family trust company and is in**
34 **compliance with the family trust company laws and regulations of the jurisdiction in which**
35 **the foreign family trust company was incorporated or organized; and**

36 **(6) Any other information reasonably and customarily required by the secretary**
37 **of foreign corporations or foreign limited liability companies seeking to qualify to conduct**
38 **business in this state.**

362.1035. 1. No family trust company shall be organized or operated with a capital
2 **account of less than two hundred fifty thousand dollars. The full amount of the initial**
3 **capital account of a family trust company shall consist of one or more asset groups**
4 **described under subsection 1 of section 362.1070, exclusive of all organization expenses.**

5 **2. A family trust company shall maintain:**

6 **(1) A physical office in this state where original or true copies, including electronic**
7 **copies, of all material business records and accounts of the family trust company may be**

8 accessed and are readily available for examination by the secretary. A family trust
9 company may also maintain one or more branch offices within or outside of this state;

10 (2) A registered agent who maintains an office in this state;

11 (3) All applicable state and local business licenses, charters, and permits; and

12 (4) A deposit account with a state-chartered or national financial institution that
13 has a principal or branch office in this state.

14 3. In addition to the requirements of subsection 2 of this section, a foreign family
15 trust company shall also:

16 (1) Be in good standing in the jurisdiction in which it is incorporated or organized;
17 and

18 (2) Stay in compliance with the family trust company laws and regulations of such
19 jurisdiction.

362.1037. Exclusive authority to manage a family trust company shall be vested in:

2 (1) If a corporation, a board of directors that consists of at least three directors; or

3 (2) If a limited liability company, a board of directors or managers that consists of
4 three directors or managers.

5
6 At least one director or manager of the company shall be a resident of this state.

362.1040. 1. One or more persons may subscribe to an organizational instrument
2 in writing for the purpose of forming a family trust company, subject to the conditions
3 prescribed by law.

4 2. The organizational instrument of a family trust company shall set forth all of the
5 information required under chapters 347 or 351, as applicable, and the following:

6 (1) The name of the company, which must distinguish the company from any other
7 nonfamily trust company or family trust company formed or engaging in business in this
8 state. If the word "trust" is included in the name, it shall be immediately preceded by the
9 word "family" so as to distinguish the entity from a nonfamily trust company operating
10 under this chapter. This subdivision shall not apply to a foreign family trust company
11 using a fictitious name that is registered and maintained in this state pursuant to the
12 requirements administered by the secretary and that distinguishes the foreign family trust
13 company from a nonfamily trust company authorized to operate under this chapter;

14 (2) The purpose for which the company is formed, which shall clearly identify the
15 restricted activities permissible to a family trust company under the Missouri family trust
16 company act; and

17 (3) A statement affirming that the family trust company shall not engage in trust
18 company business with the general public.

19 **3. The term "trust company" in the name adopted by a family trust company shall**
20 **not violate section 362.425.**

362.1045. 1. A family trust company may procure and maintain fidelity bonds on
2 **all active officers, directors, managers, and members acting in a managerial capacity and**
3 **on all employees of the company in order to indemnify the family trust company against**
4 **loss resulting from dishonest, fraudulent, or criminal acts or omissions committed by any**
5 **such person, whether acting alone or in combination with other persons and regardless of**
6 **whether such person receives a salary or other compensation from the company.**

7 **2. A family trust company may also procure and maintain an errors and omissions**
8 **insurance policy in which the family trust company is listed as the insured to cover the acts**
9 **and omissions of officers, directors, managers, and members acting in a managerial**
10 **capacity, regardless of whether any such person receives a salary or other compensation**
11 **from the company.**

12 **3. A family trust company may also procure and maintain other insurance policies**
13 **necessary or desirable in connection with the business of the company including, but not**
14 **limited to, one or more casualty insurance policies.**

362.1050. 1. A family trust company shall maintain its fiduciary books and records
2 **separate and distinct from other records of the company and shall segregate all assets held**
3 **in any fiduciary capacity from other assets of the company.**

4 **2. Assets received or held in a fiduciary capacity by a family trust company shall**
5 **not be subject to the debts or obligations of the company.**

362.1055. 1. A family trust company shall file an annual registration report with
2 **the secretary.**

3 **2. The annual registration report filed by a family trust company that is not a**
4 **foreign family trust company shall include:**

5 **(1) A statement by an authorized representative verifying that the family trust**
6 **company is in compliance with the provisions of the Missouri family trust company act and**
7 **with applicable federal laws including, but not limited to, anti-money laundering and**
8 **customer identification rules or regulations;**

9 **(2) The name of the company's designated relative and the street address for its**
10 **principal place of business; and**

11 **(3) Any other information reasonably and customarily required by the secretary**
12 **of general business corporations in connection with filing their annual registration reports.**

13 **3. The annual registration report filed by a foreign family trust company shall**
14 **include:**

15 (1) A statement by an authorized representative verifying that the foreign family
16 trust company is in compliance with the provisions of the Missouri family trust company
17 act, with the family trust company laws and regulations of the jurisdiction in which it was
18 incorporated or organized, and with applicable federal laws including, but not limited to,
19 anti-money laundering and customer identification rules or regulations;

20 (2) The current telephone number and street address of the foreign family trust
21 company's principal place of business in the jurisdiction in which it was incorporated or
22 organized;

23 (3) The current telephone number and street address of the foreign family trust
24 company's principal place of operations;

25 (4) The current telephone number and address of the physical location of any other
26 offices located in this state;

27 (5) The name and current street address in this state of the trust company's
28 registered agent;

29 (6) Documentation, to the satisfaction of the secretary, showing that the foreign
30 family trust company is in compliance with the family trust company laws and regulations
31 of the jurisdiction in which it was incorporated or organized; and

32 (7) Any other information reasonably and customarily required by the secretary
33 of general business corporations in connection with filing their annual registration reports.

34 4. An annual registration report shall be submitted on a form prescribed by the
35 secretary and signed under penalty of perjury by an authorized representative.

362.1060. 1. A family trust company may, but only for family members:

2 (1) Act as a sole or co-personal representative, executor, or curator for a probate
3 estate within or outside this state;

4 (2) Act as an attorney-in-fact or agent under a power of attorney;

5 (3) Except as provided under section 362.1065, act within or outside this state as
6 a sole fiduciary or cofiduciary, including acting as a trustee, advisory agent, assignee,
7 assignee for the benefit of creditors, authenticating agent, bailee, bond or indenture trustee,
8 conservator, conversion agent, custodian, escrow agent, fiscal or paying agent, financial
9 advisor, guardian, investment advisor or manager, managing agent, purchase agent,
10 receiver, registrar, safekeeping or subscription agent, transfer agent for entities other than
11 public companies, warrant agent, or other similar capacity generally performed by a
12 corporate trustee. In so acting, the family trust company may possess, purchase, sell,
13 invest, reinvest, safekeep, or otherwise manage or administer the real or personal property
14 of family members and individuals;

15 (4) Exercise the powers of a corporation or limited liability company incorporated
16 or organized under the laws of this state, or qualified to transact business as a foreign
17 corporation or limited liability company under the laws of this state that are reasonably
18 necessary to enable the trust company to fully exercise a power conferred under the
19 Missouri family trust company act in accordance with commonly accepted customs and
20 usages;

21 (5) Delegate duties and powers, including investment functions under section
22 469.909, in accordance with the powers granted to a trustee under chapter 456 or other
23 applicable law and retain agents, attorneys, accountants, investment advisors, or other
24 individuals or entities to advise or assist the family trust company in the exercise of its
25 powers and duties under the Missouri family trust company act and chapter 456. Such
26 exercise of power may include, but is not limited to, retaining a bank trust department or
27 a public trust company other than another family trust company; and

28 (6) Perform all acts necessary to exercise the powers enumerated in this section or
29 authorized under the Missouri family trust company act and other applicable laws of this
30 state.

31 2. A foreign family trust company in good standing in the jurisdiction in which it
32 is incorporated or organized may exercise all the trust powers in this state that a Missouri
33 family trust company may exercise.

 362.1065. Notwithstanding any other provision of the Missouri family trust
2 company act, no family trust company shall engage in commercial banking. However, a
3 family trust company may establish accounts at financial institutions for its own purposes
4 or on behalf of family members to whom it provides services under the Missouri family
5 trust company act.

 362.1070. 1. The assets forming the minimum capital account of a family trust
2 company shall:

3 (1) Consist of cash, United States Treasury obligations, or any combination thereof;
4 and

5 (2) Have an aggregate market value of at least one hundred percent of the
6 company's required capital account, as specified under subsection 1 of section 362.1035.
7 If the aggregate market value of one hundred percent of the company's capital account is,
8 at any time, less than the amount required under subsection 1 of section 362.1035, the
9 company shall have five business days to bring such capital account into compliance with
10 subsection 1 of section 362.1035.

11 2. A family trust company may purchase or rent real or personal property for use
12 in conducting business and other activities of the company.

13 **3. Notwithstanding any other provision of law, a family trust company may invest**
14 **funds for its own account, other than those required or allowed under subsection 1 or 2 of**
15 **this section, in any type or character of equity securities, debt securities, or other assets.**

16 **4. Notwithstanding any other provision of law, a family trust company may, while**
17 **acting as a fiduciary, purchase directly from underwriters or broker-dealers or purchase**
18 **in the secondary market:**

19 **(1) Bonds or other securities underwritten or brokered by:**

20 **(a) The family trust company;**

21 **(b) A family affiliate; or**

22 **(c) A syndicate, including the family trust company or a family affiliate; and**

23 **(2) Securities of investment companies for which the family trust company acts as**
24 **an advisor, custodian, distributor, manager, registrar, shareholder servicing agent,**
25 **sponsor, or transfer agent. For purposes of this section, investment companies shall be**
26 **deemed to include mutual funds, closed-end funds, or unit investment trusts as defined**
27 **under the Investment Company Act of 1940, 76 P.L. 768, as amended.**

28 **5. The authority granted under subsection 4 of this section may be exercised only**
29 **if:**

30 **(1) The investment is not expressly prohibited by the instrument, judgment, decree,**
31 **or order that establishes the fiduciary relationship;**

32 **(2) The family trust company procures in writing the consent of all cofiduciaries**
33 **with discretionary investment powers to the investment, if any; and**

34 **(3) The family trust company discloses its intent to exercise the authority granted**
35 **under subsection 4 of this section in writing to all of the trust company's account statement**
36 **recipients before the first exercise of such authority, and each such disclosure states:**

37 **(a) Any interest the family trust company has or reasonably expects to have in the**
38 **underwriting or distribution of the bonds or securities;**

39 **(b) Any fee or other compensation received or reasonably expected to be received**
40 **by the family trust company as a result of the transaction or services provided to an**
41 **investment company; and**

42 **(c) Any relationship between the family trust company and an investment company.**

43 **6. Subsections 4 and 5 of this section shall not affect the degree of prudence**
44 **required of fiduciaries under the laws of this state. However, a purchase of bonds or**
45 **securities under this section shall be presumed unaffected by a conflict between the**
46 **fiduciary's personal and fiduciary interests if such purchase:**

47 **(1) Is negotiated at a fair price;**

48 **(2) Is in accordance with:**

49 (a) The interest of the qualified beneficiaries of the trust for which the purchase is
50 made; and

51 (b) The purposes of the trust; and

52 (3) Otherwise complies with:

53 (a) The Missouri prudent investor act, sections 469.900 to 469.913, unless such
54 compliance is waived in a manner as provided by law; and

55 (b) The terms of the instrument, judgment, decree, or order establishing the
56 fiduciary relationship.

57 7. Notwithstanding subsections 1 through 6 of this section, no family trust company
58 shall, while acting as a fiduciary, purchase a bond or security issued by the family trust
59 company, its parent, or a subsidiary company of either unless:

60 (1) The family trust company is expressly authorized to do so by:

61 (a) The terms of the instrument creating the trust for which such purchase is made;

62 (b) A court order;

63 (c) The written consent of the settlor of such trust for which the family trust
64 company is serving as trustee; or

65 (d) The written consent of every adult qualified beneficiary of such trust who, at
66 the time of such purchase, is entitled to receive income under the trust or who would be
67 entitled to receive a distribution of principal if the trust were terminated; and

68 (2) The purchase of the security is at a fair price and complies with the Missouri
69 prudent investor act, sections 469.900 to 469.913, unless compliance is waived in a manner
70 as provided by law, and with the terms of the instrument, judgment, decree, or order
71 establishing the fiduciary relationship.

72 8. Except as otherwise expressly limited by this section, a family trust company is
73 authorized, without limiting any powers otherwise conferred on fiduciaries by law, to do
74 any of the following actions while acting as a fiduciary, and such actions shall be presumed
75 to be unaffected by a conflict between the fiduciary's personal and fiduciary interests:

76 (1) Make an equity investment in a closely held entity that may or may not be
77 marketable and that is directly or indirectly owned or controlled by one or more family
78 members;

79 (2) Place a security transaction using a broker who is a family member;

80 (3) Enter into an agreement with a family member who is the settlor or a qualified
81 beneficiary of a trust with respect to the appointment of the family trust company as a
82 fiduciary of the trust or with respect to the compensation of the family trust company for
83 service as a fiduciary;

84 (4) Transact business with a family member;

85 (5) Transact business with or invest in any asset of another trust, estate,
86 guardianship, or conservatorship for which the family trust company is a fiduciary or in
87 which a family member has an interest;

88 (6) Deposit trust assets in a financial institution that is owned, controlled, or
89 operated by one or more family members;

90 (7) Purchase, sell, hold, own, or invest in a security, bond, real property, personal
91 property, stock, or other asset of a family member; and

92 (8) With or without adequate security, lend moneys to or borrow moneys from a
93 family member or a trust, estate, or guardianship for which the family trust company
94 serves as a fiduciary.

95 9. If not inconsistent with and subject to the terms of subsections 4 through 8 of this
96 section, the duty of loyalty under section 456.8-802 applies to a family trust company when
97 the family trust company serves as trustee of a trust whose administration is subject to
98 chapter 456.

 362.1075. If a family trust company is required to make an oath, affirmation,
2 affidavit, or acknowledgment regarding a fiduciary capacity in which the family trust
3 company is acting or preparing to act, a director, officer, or, if the company is a limited
4 liability company, a manager or officer expressly authorized by the family trust company
5 shall make and, if required, subscribe to such oath, affirmation, affidavit, or
6 acknowledgment on behalf of the company.

 362.1080. No family trust company shall advertise its services to the public.

 362.1085. 1. The secretary may examine or investigate a family trust company at
2 any time the secretary deems necessary to determine if the family trust company engaged
3 in an act prohibited under section 362.1065 or 362.1080 and, if a family trust company
4 engaged in such act, to determine whether any other applicable law was violated.

5 2. The secretary shall examine the books and records of a foreign family trust
6 company as necessary to determine if such trust company complies with the Missouri
7 family trust company act. In connection with an examination of the books and records of
8 the trust company, the secretary may rely upon the most recent examination report,
9 review, certification letters, or similar documentation issued by the agency supervising the
10 foreign family trust company in the jurisdiction in which the foreign family trust company
11 is incorporated or organized. The secretary's examination of the books and records of a
12 foreign family trust company shall be, to the extent practicable, limited to books and
13 records of operations in this state.

14 3. For each examination or investigation of a family trust company under this
15 section, the trust company shall pay the costs of the examination or investigation by the

16 secretary. As used in this subsection, the term "costs" means the salary and travel
17 expenses of field staff that are directly attributable to the examination or investigation of
18 the trust company and the travel expenses of any supervisory and support staff required
19 as a result of examination or investigation findings. The mailing of payment for costs
20 incurred shall be postmarked within thirty days after the receipt of a notice that states the
21 costs are due. The secretary may levy a late payment of up to one hundred dollars per day
22 for each day that a payment is overdue unless waived for good cause. However, if the late
23 payment of costs is intentional, the secretary may levy an administrative fine of up to one
24 thousand dollars per day for each day the payment is overdue.

25 4. The secretary may establish by rule the requirements and records necessary to
26 demonstrate conformity with the Missouri family trust company act by a family trust
27 company.

362.1090. 1. The secretary may issue and serve upon a family trust company or
2 family trust company affiliated party a notice of charges if the secretary has reason to
3 believe that such company, family trust company affiliated party, or individual named
4 therein is engaging in or has engaged in any of the following acts:

5 (1) The company fails to satisfy the requirements of a family trust company or
6 foreign family trust company under the Missouri family trust company act;

7 (2) A violation of section 362.1035, 362.1040, 362.1050, 362.1055, 362.1060, or
8 362.1080;

9 (3) A violation of any rule of the secretary;

10 (4) A violation of any order of the secretary;

11 (5) A breach of any written agreement with the secretary;

12 (6) A prohibited act or practice under section 362.1065;

13 (7) A willful failure to provide information or documents to the secretary upon
14 written request;

15 (8) An act of commission or omission that is judicially determined by a court of
16 competent jurisdiction to be a breach of trust or fiduciary duty; or

17 (9) A violation of state or federal law related to anti-money laundering, customer
18 identification, or any related rule or regulation.

19 2. The notice of charges shall contain the statement of facts and notice of
20 opportunity for a hearing.

21 3. If no hearing is requested within the time allowed under the notice of charges or
22 if a hearing is held and the secretary finds that any of the charges are true, the secretary
23 may enter an order directing the family trust company, family trust company affiliated

24 party, or the individual named in the notice of charges to cease and desist such conduct and
25 to take corrective action.

26 4. If the family trust company, family trust company affiliated party, or the
27 individual named in the notice of charges fails to respond to the notice of charges within
28 the time allotted therein, such failure constitutes a default and justifies the entry of a cease
29 and desist order.

30 5. A contested or default cease and desist order is effective when reduced to writing
31 and served upon the family trust company, family trust company affiliated party, or the
32 individual named therein. An uncontested cease and desist order is effective as agreed.

33 6. If the secretary finds that conduct described under subsection 1 of this section
34 is likely to cause substantial prejudice to members, shareholders, beneficiaries of fiduciary
35 accounts of the family trust company, or beneficiaries of services rendered by the family
36 trust company, the secretary may issue an emergency cease and desist order requiring the
37 family trust company, family trust company affiliated party, or individual named therein
38 to immediately cease and desist from engaging in the conduct stated and to take corrective
39 action. The emergency order is effective immediately upon service of a copy of the order
40 upon the family trust company or family trust company affiliated party and shall remain
41 effective for ninety days. If the secretary begins nonemergency cease and desist
42 proceedings under subsection 1 of this section, the emergency order shall remain effective
43 until the conclusion of the proceedings under this section.

44 7. A family trust company shall have ninety days to wind up its affairs after entry
45 of any order to cease and desist from operating as a family trust company. If a family trust
46 company that is not a foreign family trust company is still operating after ninety days, the
47 secretary may seek an order from a circuit court for the annulment or dissolution of the
48 company. If a foreign family trust company is still operating after ninety days, the
49 secretary may seek an injunction from a circuit court restraining the company from
50 continuing to operate in this state.

362.1095. If a family trust company fails to submit within the prescribed period its
2 annual registration report or any other report required by the Missouri family trust
3 company act or rule, the secretary may impose a fine of up to one hundred dollars for each
4 day that the annual registration report or other report is overdue. Failure to provide the
5 annual registration report within sixty days after the end of the calendar year shall
6 automatically result in termination of the registration of a family trust company. A family
7 trust company may have its registration automatically reinstated by submitting to the
8 secretary, on or before August thirty-first of the calendar year in which the annual
9 registration report is due, the company's annual registration report, a five hundred dollar

late fee, and the amount of any fine imposed by the secretary under this section. A family trust company that fails to renew or reinstate its registration shall wind up its affairs on or before November thirtieth of the calendar year in which such failure occurs.

362.1100. 1. The secretary may issue and serve upon a family trust company and a family trust company affiliated party a notice of charges if the secretary has reason to believe that the family trust company affiliated party is engaging or has engaged in conduct that:

(1) Demonstrates that the trust company does not satisfy the requirements of a family trust company or of a foreign family trust company under the Missouri family trust company act;

(2) Is a prohibited act or practice under section 362.1065;

(3) Violates section 362.1035, 362.1040, 362.1050, 362.1055, 362.1060, or 362.1080;

(4) Violates any other law involving fraud or moral turpitude that constitutes a felony;

(5) Violates a state or federal law related to anti-money laundering, customer identification, or any related rule or regulation;

(6) Is a willful violation of a rule of the secretary;

(7) Is a willful violation of an order of the secretary;

(8) Is a willful breach of a written agreement with the secretary; or

(9) Is an act of commission or omission or a practice that the secretary has reason to believe is a breach of trust or fiduciary duty.

2. The notice of charges shall contain a statement of facts and notice of opportunity for a hearing.

3. If no hearing is requested within the time allowed in the notice of charges or if a hearing is held and the secretary finds that any of the charges in the notice of charges are true, the secretary may enter an order that removes the family trust company affiliated party from the family trust company or that restricts or prohibits the family trust company affiliated party from participating in the affairs of the family trust company, state financial institution, subsidiary, or service corporation.

4. If the family trust company affiliated party fails to respond to the notice of charges within the time allotted in the notice of charges, such failure constitutes a default and justifies the entry of an order of removal.

5. A contested or default order of removal is effective when served upon the family trust company and the family trust company affiliated party. An uncontested order of removal is effective as agreed.

33 **6. (1) The chief executive officer of a family trust company or the person holding**
34 **the equivalent office shall promptly notify the secretary if such person has actual**
35 **knowledge that a family trust company affiliated party is charged with a felony in a state**
36 **or federal court.**

37 **(2) If a family trust company affiliated party is charged with a felony in a state or**
38 **federal court or, in a court of a foreign country with which the United States maintains**
39 **diplomatic relations, is charged with an offense that involves a violation of law relating to**
40 **fraud, currency transaction reporting, money laundering, theft, or moral turpitude and**
41 **such offense is equivalent to a felony charge under state or federal law, then the secretary**
42 **may enter an emergency order that suspends the family trust company affiliated party or**
43 **that restricts or prohibits participation by such party in the affairs of the family trust**
44 **company or any state financial institution, subsidiary, or service corporation effective upon**
45 **service of the order on the company and such family trust company affiliated party.**

46 **(3) The order shall contain notice of opportunity for a hearing, at which the family**
47 **trust company affiliated party may request a post-suspension hearing to show that**
48 **continued service to or participation in the affairs of the family trust company does not**
49 **pose a threat to the interests of the company. In accordance with applicable commission**
50 **rules, the secretary shall notify the family trust company affiliated party whether the order**
51 **suspending or prohibiting the family trust company affiliated party from participating in**
52 **the affairs of a family trust company, or state financial institution, subsidiary, or service**
53 **corporation will be rescinded or otherwise modified. The emergency order shall remain**
54 **in effect, unless otherwise modified by the secretary, until the criminal charge is disposed.**
55 **The emergency order shall dissolve upon the final, unappealed dismissal of all charges**
56 **against or the acquittal of the family trust company affiliated party. Such occurrences**
57 **shall not prohibit the secretary from instituting proceedings under subsection 1 of this**
58 **section. If the family trust company affiliated party charged is convicted or pleads guilty**
59 **or nolo contendere, regardless of adjudication, the emergency order shall become final.**

60 **7. No family trust company affiliated party removed from office under this section**
61 **shall be eligible for reelection to such office or to any other official position in a family trust**
62 **company or financial institution in this state except with the written consent of the**
63 **secretary. A family trust company affiliated party who is removed, restricted, or**
64 **prohibited from participation in the affairs of a family trust company or state financial**
65 **institution under this section may petition the secretary for modification or termination of**
66 **such removal, restriction, or prohibition.**

67 **8. The resignation, termination of employment or participation, or separation from**
68 **a family trust company of the family trust company affiliated party shall not affect the**

69 jurisdiction and authority of the secretary to issue a notice and proceed under this section
70 against the family trust company affiliated party if such notice is served within six years
71 of the date such person ceased to be a family trust company affiliated party to such
72 company.

362.1105. 1. The books and records of a family trust company are confidential and
2 shall be made available for inspection and examination only:

3 (1) To the secretary or the secretary's authorized representative;

4 (2) To any person authorized to act for the company;

5 (3) As compelled by a court, pursuant to a subpoena issued in accordance with state
6 or federal law. Before the production of the books and records, the party seeking
7 production shall agree to reimburse the company for the reasonable costs and fees incurred
8 in compliance with the production. If the parties disagree on the amount of
9 reimbursement, the party seeking the records may request the court that issued the
10 subpoena to set the amount of reimbursement;

11 (4) Pursuant to a subpoena held by any federal or state law enforcement or
12 prosecutorial instrumentality authorized to investigate suspected criminal activity;

13 (5) As authorized by, if a corporation, the board of directors or, if limited liability
14 company, the managers; or

15 (6) As provided under subsection 2 of this section.

16 2. (1) If a corporation, each customer and stockholder, or, if a limited liability
17 company, each member has the right to inspect the books and records of a family trust
18 company as they pertain to such person's accounts or the determination of such person's
19 voting rights.

20 (2) The books and records pertaining to customers, members, and stockholders of
21 a family trust company shall be kept confidential by the company and its directors,
22 managers, officers, and employees. The books and records of customers, members, and
23 stockholders shall not be released except upon the express authorization of the customer
24 as to his or her own accounts or a stockholder or member regarding his or her voting
25 rights. However, information may be released without the authorization of a customer,
26 member, or shareholder in a manner prescribed by the board of directors of a corporation
27 or managers of a limited liability company for the purposes of verifying or corroborating
28 the existence or amount of a customer's account if such information is reasonably provided
29 to meet the needs of commerce and to ensure accurate credit information. Notwithstanding
30 this subdivision, this subsection shall not prohibit a family trust company from disclosing
31 financial information as permitted under 15 U.S.C. Section 6802, as amended.

32 **(3) The willful unlawful disclosure of confidential information in violation of this**
33 **section shall be a class E felony.**

34 **(4) This subsection shall not apply to a foreign family trust company. The laws of**
35 **the jurisdiction in which a foreign family trust company was incorporated or organized**
36 **govern the rights of its customers, members, and stockholders to inspect its books and**
37 **records.**

38 **3. For purposes of this section, the term "books and records" shall include, but is**
39 **not limited to, the initial registration documents of a family trust company under section**
40 **362.1030 and the annual registration report made by a family trust company under section**
41 **362.1055.**

362.1110. 1. A family trust company shall keep at its principal place of business or
2 **principal place of operations:**

3 **(1) Full and complete records of the names and residences of all its shareholders**
4 **or members;**

5 **(2) The number of shares or membership units held by each, as applicable; and**

6 **(3) The ownership percentage of each shareholder or member.**

7

8 **The records are subject to inspection by all shareholders or members of the trust company**
9 **and the officers authorized to assess tax documents under state authority during the**
10 **normal business hours of the trust company. A current list of shareholders or members**
11 **shall be made available to the secretary's examiners for their inspection and, upon the**
12 **request of the secretary, shall be submitted to the secretary.**

13 **2. The secretary shall retain for at least ten years:**

14 **(1) Examination reports;**

15 **(2) Investigatory records;**

16 **(3) The organizational instrument of a family trust company; and**

17 **(4) The annual registration reports filed by a family trust company.**

18 **3. A copy of any document on file with the secretary that is certified by the**
19 **secretary as a true copy may be introduced in evidence as if it were the original. The**
20 **secretary shall establish a schedule of fees for preparing true copies of documents.**

21 **4. Orders issued by courts or administrative law judges for the production of**
22 **confidential records or information shall provide for inspection in camera by the court or**
23 **the administrative law judge. If the court or administrative law judge determines that the**
24 **documents requested are relevant or would likely lead to the discovery of admissible**
25 **evidence, the documents shall be subject to further orders by the court or the**
26 **administrative law judge to protect the confidentiality thereof. An order directing the**

27 release of information shall be immediately reviewable, and a petition by the secretary for
28 review of the order shall automatically stay any further proceedings in a trial court or
29 administrative hearing until the disposition of the petition by the reviewing court. If any
30 other party files a petition for review, such filing shall stay proceedings only upon an order
31 of the reviewing court.

362.1115. 1. The following information held by the secretary is confidential and
2 exempt from chapter 610:

3 (1) Any personal identifying information appearing in records relating to a
4 registration or an annual certification of a family trust company;

5 (2) Any personal identifying information appearing in records relating to an
6 examination of a family trust company;

7 (3) Any personal identifying information appearing in reports of examinations,
8 operations, or conditions of a family trust company, including working papers;

9 (4) Any portion of a list of names of the shareholders or members of a family trust
10 company;

11 (5) Information received by the secretary from a person from another state or
12 nation or the federal government that is otherwise confidential or exempt under the laws
13 of such state or nation or under federal law; and

14 (6) An emergency cease and desist order issued under section 362.1090 until the
15 emergency order is made permanent, unless the secretary finds that such confidentiality
16 will result in substantial risk of financial loss to the public.

17 2. Information made confidential and exempt under subsection 1 of this section
18 may be disclosed by the secretary to:

19 (1) The authorized representative or representatives of the family trust company
20 under examination. The authorized representative or representatives shall be identified
21 in a resolution or by written consent of the board of directors if a corporation or the
22 managers if a limited liability company;

23 (2) A fidelity insurance company upon written consent of the family trust
24 company's board of directors if a corporation or its managers if a limited liability
25 company;

26 (3) An independent auditor upon written consent of the family trust company's
27 board of directors if a corporation or its managers if a limited liability company;

28 (4) A liquidator, receiver, or conservator if appointed. However, any portion of the
29 information that discloses the identity of a bondholder, customer, family member, member,
30 or stockholder shall be redacted by the secretary before releasing such information;

31 **(5) Any other state, federal, or foreign agency responsible for the regulation or**
32 **supervision of family trust companies;**

33 **(6) A law enforcement agency in the furtherance of such agency's official duties and**
34 **responsibilities;**

35 **(7) The appropriate law enforcement or prosecutorial agency for the purpose of**
36 **reporting any suspected criminal activity; or**

37 **(8) Comply with a legislative subpoena. A legislative body or committee that**
38 **receives records or information pursuant to such subpoena shall maintain the confidential**
39 **status of such records or information. However, in a case involving the investigation of**
40 **charges against a public official subject to impeachment or removal, records or**
41 **information may be disclosed to the extent necessary as determined by the legislative body**
42 **or committee.**

43 **3. This section shall not prevent or restrict the publication of:**

44 **(1) A report required by federal law; or**

45 **(2) The name of the family trust company and the address of its registered agent.**

46 **4. The willful disclosure of information made confidential and exempt by this**
47 **section is a class E felony.**

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